

**ARIZONA SUPREME COURT
RULE 123 AND DATA DISSEMINATION
ADVISORY COMMITTEE**

MINUTES

Thursday, October 30, 2008

MEMBERS PRESENT:

Dave Byers
Mark Jensen (for Michael Jeanes)
David Bodney
Mark Bolton (for Janna Day)
Donald Jacobson
Patricia Noland
Rachelle Resnick
Patricia Sallen
Terry Stewart
Honorable John Taylor
Karen Westover

GUESTS PRESENT:

Michelle Carpenter
Dan Corsetti
Jennifer Greene
M.J. Gregory
John Moody
Dorrian Jones
Regina Kaupanger
Marc Osborn
Rich Robertson

MEMBERS ABSENT:

Catherine O'Grady
James Scorza
Honorable Peter B. Swann

STAFF:

Melinda Hardman

Tama Reily

I. CALL TO ORDER

The October 30, 2008 meeting of the Rule 123 & Data Dissemination Advisory Committee was called to order by Vice Chair, Dave Byers, at 10:01 am.

Members and guests introduced themselves.

Mr. Byers stated the goals of the meeting and reviewed the timeline for presenting the committee's final proposal to the Arizona Judicial Council (AJC).

II. APPROVAL OF MINUTES

The minutes from the September 23, 2008 meeting of the Rule 123 & Data Dissemination Advisory Committee were presented for approval.

MOTION: To approve the minutes from the September 23, 2008 meeting of the Rule 123 & Data Dissemination Advisory Committee as presented. Motion seconded. Approved unanimously.

III. ROUNDTABLE DISCUSSION OF REMAINING/PENDING ISSUES

The committee reviewed the list of pending items and determined what action, if any, was needed. The items were decided as follows:

- HB2159: This issue was taken to the presiding judges last week and the presiding judges determined there is no need to amend Rule 123 in light of this bill. Their position should be analyzed by a workgroup of this committee to confirm that nothing has been overlooked. The workgroup should articulate why there is no need to amend the rule, and if the workgroup determines there is a need to amend, the workgroup should file a comment to the rule petition. Volunteers for the workgroup are Don Jacobson, Rachelle Resnick, Karen Westover, and David Bodney.
- Certification & Licensing concerns: Legal Services has been working with Nancy Swetnam, Certification & Licensing Division Director, and believes her primary concern is covered in the proposed amendment to Rule 123(e) Access to Administrative Records, as follows:

(13) Certification records. Proprietary materials required to be submitted to the supreme court by applicants for certification or licensing are closed.

Suggestion was made to put the onus on the filer of proprietary material to identify it as such.

MOTION: To specify that proprietary material required to be submitted to the supreme court by applicants for certification and licensing are closed and to require the filer of such records to identify them as proprietary. Motion seconded. Approved unanimously.

- Amending (e)(7): Should (e)(7) be amended to include closing any logs of files reviewed in clerks' offices? Discussion concluded the rule should be amended to provide that if logs are maintained, the logs are closed. The committee emphasized there is no obligation to maintain a log of files reviewed in clerks' offices.

MOTION: To modify (e)(7) to say that patron records maintained by a court or clerk are closed. Motion seconded. Vote: 5-4-0.

- Government Partner Policy: Discussion centered on recommended amendments to Rule 123 to clarify that the rule governs access to court records by court employees and bulk data requests, in addition to access by the public. Further language will be included in an Arizona Code of Judicial Administration (ACJA) section to provide details of the various types and limitations of access.
- Draft Rule 123(h)(5): Attention is brought to page 34, paragraph 5, of the draft report, under *Correcting Data Errors*. The language that appears here is verbatim to that which appears in the pending but unapproved Rule 123 Petition. Should this language remain? Committee consensus was the language should remain.
- Draft Rule 123(j)(1)(B): Should courts be authorized to enter into an agreement with a private entity familiar with the courts' databases to run special reports? The proposed language is:
 - A CUSTODIAN MAY CONTRACT WITH A PRIVATE OR PUBLIC INSTITUTION FOR THE PROVISION OF BULK DATA UNDER THIS POLICY.

Committee consensus was to include the provision but also include specialized reports of compiled data for which the custodian may contract with an outside institution.

- LexisNexis letter: LexisNexis' letter of concerns regarding data and record retention timeframes was considered. Suggestion was made to LexisNexis representative, Marc Osborn, that LexisNexis should review the court record retention schedules currently in place, and if LexisNexis is not comfortable with the timeframes in these schedule, LexisNexis could consider petitioning the court for a change to the schedules. A records retention schedule packet was provided to Mr. Osborn today. LexisNexis did not raise additional concerns, either from their letter of October 22, 2008 or otherwise.
- Adult victims: Should adults be included in the provision keeping records containing juvenile victims' (of sexual assault) names off of remote electronic access? Attention was directed to the registered users section of the final report, page 27-28, (B)(i)(a), which states "**family law, paternity, or other matters arising out of Title 25**" are excluded from access. The committee was in consensus that this was satisfactory and that records containing adult victims' names need not be specifically excluded from remote electronic access.

General comments and/or concerns regarding the draft report were discussed. Several minor, non-substantive language changes were suggested.

Further amended items were as follows:

- On proposed amendment to Rule 123(e) Access to Administrative Records:

MOTION: To return language under Rule 123(e)(1) from *Personnel Records* to *Employee Records*. Motion seconded. Approved unanimously.

- In Appendix D: Recommended Provisions for New ACJA Section on Public Records:

MOTION: To form a task group that will work to designate a suitable, one-time registration fee for remote online access to case records. Motion seconded. Approved unanimously.

- With discussion concluded, a motion was made to accept the final draft report with the modifications proposed today.

MOTION: To approve the Final Report of the Advisory Committee on Supreme Court Rule 123 and Data Dissemination as amended. Approved unanimously.

IV. Call to the Public/Adjourn

Mr. Byers made a call to the public.

Janet DelTufo from the First Amendment Coalition of Arizona expressed her desire that all case records should be available to the public through remote electronic access. Mr. Byers explained to Ms. DelTufo that the committee had heard from groups concerned with privacy and identity theft, and, as a result, the committee determined that the rule modifications being presented are appropriate.

Rich Robertson, of R3 Investigations, asked for clarification of the terms “bulk” and “compiled” data. In addition, Mr. Robertson expressed the opinion that it is a function of the court to compile reports that provide the specific information requested by a user. Mr. Byers explained that a court is not required to create and/or provide such customized reports. This goes far beyond the statutory requirements of making information available to the public. Mr. Byers also noted that Rule 123 includes a provision for appealing a denial of a request for information.